

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK**

EVLIYA OGLU TEKSTİL A.Ş.,

Plaintiff,

V.

TURKO TEXTILE LLC, ISMAIL AKDENİZ
And NURİ EMRE ARAZ,

Defendants.

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Civil Action No.: 19-cv-10769

COMPLAINT

Plaintiff Evliyaoglu Tekstil A.S., a/k/a Evliyaoglu Tekstil Tasarim Insaat San VE Ticaret A.S., (“Plaintiff” or “Evliyaoglu Tekstil A.S.”) by and through their attorneys at the law firm of Scoolidge Peters Russotti & Fox LLP, as and for their Complaint against Defendants Turko Textile LLC, Ismail Akdeniz and Nuri Emre Araz (collectively the “Defendants”) state as follows:

NATURE OF THIS ACTION

1. This action is brought by Plaintiff Evliyaoglu Tekstil A.S to collect an unpaid debt owed by the Defendants. Plaintiff is a manufacturer and supplier of Turkish textile home goods that it exports from Turkey into the United States. From November 2015 through March 2018, Plaintiff supplied Turko Textile with home textile goods at an approximate total price of

\$3,298,266.00. As of July 11, 2018, Turko Textile paid only \$2,025,184.00, leaving an unpaid balance of \$1,273,082.00.

2. By an agreement dated July 11, 2018 (the “Agreement”), Plaintiff entered into an agreement with Defendants that, *inter alia*, settled the unpaid balance due and owing to Plaintiff. Pursuant to said Agreement, the parties agreed that the total debt to be repaid by Turko Textile would be \$1,300,000.00, to be paid pursuant to the payment plan and payment schedule set forth therein. The Agreement additionally included a personal guarantee of repayment by the individual Defendants, Nuri Emre Araz and Ismail Akdeniz.

3. Since entering the Agreement, Turko Textile has paid only \$150,000.00 and has returned a portion of the subject goods to Plaintiff for which Plaintiff has given Defendants a credit of \$373,517.65. Presently, Defendants owe an unpaid balance of \$776,482.35 (the “Unpaid Balance”).

4. As detailed below, this is an action seeking a monetary award and judgment against Defendants equal to the Unpaid Balance, plus costs, interest and such other and further relief as the Court deems just and proper.

JURISDICTION AND VENUE

1. This Court has diversity jurisdiction over this matter under 28 U.S.C § 1332 because the matter in controversy exceeds \$75,000.00, Plaintiff is a citizen of a foreign country and Defendants' principal place of business is New York, New York.

2. This Court has personal jurisdiction over the Defendants because they transact business in this judicial district and this claim arises out of such business.

3. Venue is proper pursuant to 28 U.S.C § 1391 as a substantial part of the events giving rise to the claims and causes of action occurred in this district.

THE PARTIES

4. Plaintiff Evliyaoglu Tekstil A.S. is a corporation duly organized under the laws of the Republic of Turkey.

5. Defendant Turko Textile, LLC ("Turko Textile") is a limited liability company existing under the laws of the State of New York.

6. Ismail Akdeniz ("Akdeniz") is an individual residing and doing business in the State of New York. Akdeniz is a principal and member of Turko Textile.

7. Upon information and belief Nuri Emre Araz ("Araz") is an individual residing and doing business in the State of New Jersey. Araz is a principal and member of Turko Textile.

FACTS

8. From November 2015 through March 2018, Evliyaoglu Tekstil A.S. supplied approximately \$3,298,266.00 of textile products to Turko Textile pursuant to several orders by Turko Textile.

9. From November 2015 through March 2018, Plaintiff received from Turko Textile payments totaling \$2,175,184.00, leaving an unpaid balance of \$1,273,082.00 as of June 12, 2018.

10. On July 11, 2018, Plaintiff and Defendants entered an Agreement to settle this debt for \$1,300,000.00, pursuant to the payment terms and schedule set forth therein. (i.e. the “Agreement”). A true and correct copy of the Agreement with certified translation is attached as **Exhibit A** and is incorporated by reference herein.

11. Pursuant to the Agreement, Araz and Akdeniz personally guaranteed the repayment of the amount due and owing. Specifically, the Agreement states that “The representatives of the payer company, Turko Textile LLC, Ismail Akdeniz and Nuri Emre Araz, are guarantors and mutually responsible to pay the debt.” See **Exhibit A** at page 2.

12. After execution of the Agreement, Turko Textile made payments that total \$150,000.00, and have made no further payments.

13. Turko Textile’s last payment was made on or about June 12, 2018.

14. Turko Textile has defaulted on its payment obligations as set forth in the Agreement.

15. Plaintiff has made repeated demands on Defendants to pay the Unpaid Balance to which Defendants refuse.

16. Turko Textile's failure to timely remit payments to Plaintiff pursuant to the Agreement is a breach of the Agreement and its promises to pay for goods supplied by Plaintiff to Turko Textile.

17. At all times relevant herein, Plaintiff has fully performed its obligations to Defendants by supplying the goods pursuant to the initial orders and rendering all performance required under the Agreement.

18. After execution of the Agreement, Turko Textile returned some of the goods that had been previously purchased from Plaintiff, in the amount of \$373,517.65, to which Plaintiff gave Turko Textile a credit toward the satisfaction of the debt owed under the Agreement.

19. Except for the payments described herein that total \$150,000.00 and the goods that were returned for a credit of \$373,517.65, Defendants have failed to timely remit payments as per Defendants' obligations under the Agreement.

20. Turko Textile's failure to make payments as promised in the Agreement is a breach of the Agreement.

21. Araz and Akdeniz's failure to make payments as personal guarantors of the Unpaid Balance is a breach of the Agreement.

**AS AND FOR THE FIRST CAUSE OF ACTION
(Breach of Contract by Turko Textile)**

22. Plaintiff incorporates all the foregoing paragraphs as if fully set forth herein.

23. At all times relevant herein, Plaintiff has fully performed its obligations to Defendants by supplying home textile goods to Defendants pursuant to the initial orders made by Defendants and rendering all performance required under the Agreement.

24. Pursuant to the Agreement and in an effort to settle the debt then due and owing to Plaintiff, Turko Textile agreed to pay Plaintiff \$1,300,000.00, in monthly payments pursuant to the terms and conditions set forth therein.

25. After execution of the Agreement, Turko Textile made payments of \$150,000.00 and returned some of the subject goods to Plaintiff thereby receiving a credit of \$373,517.65; and have not made any payments since.

26. Defendants failure to make payment(s) on the unpaid balance pursuant to the terms of the Agreement is a breach of the Agreement.

27. Accordingly, Defendant Turko Textile should be found liable for its breach of the Agreement and judgment should be awarded against Defendants jointly and severally for their

breach of the Agreement in the principal amount of \$776,482.35, plus interest, costs and such other and further relief that this Court deems just and proper.

**AS AND FOR THE SECOND CAUSE OF ACTION
(Breach of Contract by Guarantors)**

28. Plaintiff incorporates the foregoing paragraphs as if fully set forth herein.

29. At all times relevant herein, Plaintiff has fully performed its obligations to Defendants by supplying home textile goods to Defendants pursuant to the initial orders made by Defendants and rendering all performance required under the Agreement.

30. Pursuant to the Agreement and in an effort to settle the debt then due and owing to Plaintiff, Akdeniz and Araz as personal guarantors agreed to pay Plaintiff \$1,300,000.00, pursuant to the terms and conditions set forth therein.

31. After execution of the Agreement, Turko Textile made payments of \$150,000.00 and returned goods to Plaintiff thereby receiving a credit of \$373,517.65; and have not any payments since.

32. As guarantors, Defendants Araz and Akdeniz are individually and jointly liable to pay Unpaid Balance; and their failure to pay the Unpaid Balance as per the terms of the Agreement is a breach of the Agreement.

33. Accordingly, Defendants Araz and Akdeniz, in their individual capacities as guarantors under the Agreement, should be found liable, jointly and severally, for their breach of the Agreement; and judgment should be awarded against Defendants for their breach of the Agreement in the principal amount of \$776,482.35, plus interest, costs and such other and further relief that this Court deems just and proper.

AS AND FOR THE THIRD CAUSE OF ACTION

(Unjust Enrichment)

34. Plaintiff incorporates all the foregoing paragraphs as if fully set forth herein.

35. As set forth in the Agreement, Defendants have purchased from Plaintiff, but have failed to pay for, home textile goods valued at \$776,482.35.

36. Defendants have been unjustly enriched by their receipt of said goods without payment, at the substantial expense and detriment of Plaintiff.

37. It is against equity and good conscious to permit the Defendants to be unjustly enriched to the substantial expense and detriment to the Plaintiff. Accordingly, Defendants should be found jointly and severally liable for the entire Unpaid Balance, plus interest and costs, and such other and further relief as the court deems just and Proper.

WHEREFORE, Plaintiff demands judgment against the Defendants as follows:

- A.** On the First and Second Causes of Action for breach of the Agreement and personal guaranty therein, a monetary award against Defendant Turko Textile and Defendants Ismail Akdeniz and Nuri Emre Araz as Guarantors, jointly and severally, in the amount of \$776,482.35, plus interest at the highest legal rate;
- B.** On the Third Cause of Action for unjust enrichment, a monetary judgment against all Defendants, jointly and severally, in the principal amount of \$776,482.35, plus interest at the highest legal rate; and
- C.** For an award against defendants for costs, legal fees and such other and further relief as the Court deems just and proper.

Dated: New York, New York
November 20, 2019

Scoolidge Peters Russotti & Fox LLP
Attorneys for Plaintiff

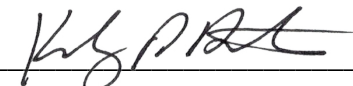
By: 
Kelly P. Peters (KP8888)
2 Park Avenue, 19th Floor
New York, New York 10016
Tel: 212-729-7708
kelly@sprflp.com

Exhibit A

BORÇ ÖDEME
PROTOKOLÜDÜR

ALACAKLI : EVLİ YAOĞLU TEKSTİL TASARIM İNŞAAT SANAYİ VE TİCARET ANONİM ŞİRKETİ
ADRES : Gürleyik Mah. Cafer Sadık Abaloğlu Bul. No: 12 Honaz / DENİZLİ / TÜRKİYE
VERGİ DAİRESİ : Gökpınar V.D. 797 004 8134
TELEFON : +90(258)269 14 50

BORÇLU : TURKO TEXTILE LLC
ADRES : 267 5TH AVENUE SUIT SB105 NY 10016 NEW YORK / USA
VERGİ DAİRESİ :
TELEFON : 001 646 7241292 001 917 5973409

PROTOKOLÜN
KONUSU

: Alacaklı firma tarafından Borçlu Firmaya Türkiye'den ihracat yoluyla satışların mal bedellerinden **1.300.000 (birmilyonüçyüzbin) USD** tutarında mutabık kalınan cari hesap bakiyesinin ödeme protokölüdür.

Ödeme planı aşağıda belirtilen tarihlerde tutarlarda borçlu tarafından alacaklıya ödenmesi taraflarca belirlenerek kabul edilmiştir. Ödemeye ilişkin her ayın 5. gününe kadar borçluya opsiyon tanınmıştır.

	ÖDEME TARİHİ	TUTAR
1.	8/1/18	\$ 50,000.00
2.	9/3/18	\$ 50,000.00
3.	10/1/18	\$ 50,000.00
4.	11/1/18	\$ 50,000.00
5.	12/3/18	\$ 50,000.00
6.	1/2/19	\$ 50,000.00
7.	2/1/19	\$ 100,000.00
8.	3/1/19	\$ 100,000.00
9.	4/1/19	\$ 100,000.00
10.	5/1/19	\$ 100,000.00
11.	6/3/19	\$ 100,000.00
12.	7/1/19	\$ 100,000.00
13.	8/1/19	\$ 100,000.00
14.	9/2/19	\$ 100,000.00
15.	10/1/19	\$ 100,000.00
16.	11/1/19	\$ 100,000.00
	TOPLAM	\$ 1,300,000.00

Borçlu şirket TURKO TEXTILE LLC 'ni temsilen İsmail Akdeniz ve Nuri Emre Araz şahsi kefaletleri ile borcun ödenmesi yükümlülüğünden müteselsilen sorumludurlar. Kefillerin kimlik örnekleri protokol ekindedir.

İşbu protokol hükümlerinin yerine getirilmemesinden doğabilecek anlaşmazlıklar için Amerika mahkemeleri ve icra daireleri yetkilidir.

İşbu protokol 2 nüsha düzenlenerek taraflarca imza altına alınmıştır.

BORÇLU

Turko Textile LLC
: TURKO TEXTILE LLC
267 5th Ave 5/05
New York, NY 10016

KEFİL

: İSMAİL AKDENİZ

KEFİL

: NURI EMRE ARAZ

11 TEMMUZ 2018

ALACAKLI : EVLİYAĞLU TEKSTİL TASARIM
İNŞAAT SANAYİ VE TİCARET
ANONİM ŞİRKETİ-Temsilen
FUAT ÖZSOY-Yön.Kör.Başk.Yard

ŞAHİT

: TAMER ÖZDEMİR

DEBT PAYMENT
PROTOCOL

PAYEE: EVLIYAOGU TEXTILE DESIGN CONSTRUCTION INDUSTRY AND TRADE INCORPORATED COMPANY
ADDRESS: Gurleyik Mah., Cafer Sadik Abalioglu Bul., No: 12, Honaz / DENIZLI / TURKEY
TAX DEPARTMENT: Gokpinar Tax Department 797 004 8134
TELEPHONE: +90 (258) 269 14 50

PAYER: TURKO TEXTILE LLC
ADDRESS: 267 5th AVENUE, SUITE SB105, NY, 10016, NEW YORK / USA
TAX DEPARTMENT:
TELEPHONE: 001 646 7241292 001 917 5973409

SUBJECT OF PROTOCOL: This is a debt payment protocol of the agreed current account balance of **1,300,000 (One Million Three Hundred Thousand) USD** for goods sold through export by the payee company to the payer company from Turkey.

The payment plan has been determined and accepted by the parties on the dates indicated below. The payer was given the option to pay until the 5th day of each month.

	DATE OF PAYMENT	AMOUNT
1.	8/1/18	\$ 50,000.00
2.	9/3/18	\$ 50,000.00
3.	10/1/18	\$ 50,000.00
4.	11/1/18	\$ 50,000.00
5.	12/3/18	\$ 50,000.00
6.	1/2/19	\$ 50,000.00
7.	2/1/19	\$ 100,000.00
8.	3/1/19	\$ 100,000.00
9.	4/1/19	\$ 100,000.00
10.	5/1/19	\$ 100,000.00
11.	6/3/19	\$ 100,000.00
12.	7/1/19	\$ 100,000.00
13.	8/1/19	\$ 100,000.00
14.	9/2/19	\$ 100,000.00
15.	10/1/19	\$ 100,000.00
16.	11/1/19	\$ 100,000.00
	TOTAL	\$ 1,300,000.00

The representatives of the payer company, TURKO TEXTILE LLC, Ismail Akdeniz and Nuri Emre Araz, are guarantors and mutually responsible to pay the debt. The copies of identification documents of the guarantors are attached.

Any possible disputes arising from violation of provisions of this protocol shall be resolved by the USA Courts and levy departments.

This protocol has been prepared in two copies and has been signed by the parties.

PAYER: **TURKO TEXTILE LLC**
267 5th Avenue, Suite SB105
New York, 10016
/Signature/

PAYEE: EVLIYAOGU TEXTILE DESIGN
CONSTRUCTION INDUSTRY AND TRADE
INCORPORATED COMPANY – Represented by
FUAT OZSOY - Vice Chairman of Board

GUARANTOR: ISMAIL AKDENIZ

/Signature/

WITNESS: TAMER OZDEMIR

/Signature/

GUARANTOR: NURI EMRE ARAZ

/Signature/

JULY 11, 2018



Debt Payment Protocol

Translated from **Turkish to English** for

EVLIYAOGU TEXTILE DESIGN CONSTRUCTION INDUSTRY AND TRADE INCORPORATED COMPANY

We, **Montesino Translation LLC**, a professional translation company, hereby certify that the above-mentioned document has been translated by an experienced and qualified professional translator and that, in our best judgment, the translated text truly reflects the content, meaning, and style of the original text and constitutes in every aspect a correct and true translation of the original document.

This is to certify the correctness of the translation only. We do not guarantee that the original is a genuine document, or that the statements contained in the original document are true. Further Montesino Translation assumes no liability for the way, which the customer uses the translation, or any third party, including end users of the translation.

A copy of this translation is attached to this certification.



Member Number #258756

Pedro Montesino
Chief Executive Officer
Montesino Translation LLC

Dated: October 9, 2019

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